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June 1996

C-Span replay of 4 segments on PP, 25th anniversary, June 10-14, 1996

David Rudenstine:

[Only the Times and the Post are ever interviewed, "the two major players". But the other papers were in rebellion, defiance of government and to some extent the courts. What of their perspective, considerations, courage, aims...?

Do any of them ever do anniversary relections? CALL THEM.

DR: I have (in us pEACE Corps in Uganda; in third week in Law School got induction notice for end of semester): my own suspicion of what I'm told by the government...

Caller: There's nothing in the Presidential oath that he must tell (the public) the truth, the whole truth and nothing but the truth...they do lie to us... (a Nixon supporter)

DR: episode shows that the public does expect the government to tell the truth on important matters (not on everything). WG was an important point in public's distrust of government...

[expects, yes. But should they?

DR: some Republican senators (which") were dumbfounded that the Nixon Administration was applying for prior restraint when the NYT was delivering hammer blows to the Democrats every day

DR: a) HAK: if N did nothing to restrain, he would appear as a weakling in eyes of Chinese (?) and others...

b) Mardian said that only prior restraint would prevent papers from causing serious damage to national security

[Does DR really think that Mardian's predictable opinion would sway Nixon, to reverse his initial political judgment that this would be bad for the Democrats, good for the Republicans [this couldn't be achieved if the prior restraint was effective! It would mean giving up all the advantages of the publication for the Republicans]

[The problem was that the PP didn't just discredit the Democrats, it discredited the Democrat's policy, aims, strategy: and tendency to lie, keep secret foreign policy--and Nixon was pursuing the same policy, strategy, secrecy, lies, all secretly: PP threatened to raise questions and guesses that would reveal this, undermine the secrecy of Nixon's policy, and at the same time discredit the substance of this policy.

This was what HAK would have pointed out to Nixon, implicitly, in the form of the more immediate and specific threat that I posed in terms of my knowledge of their policy--as I revealed to him the previous July and September 1970 at San Clemente, in "leaking into the White House" my understanding of their strategy, both to Haig and then to HAK (note that according to Ehrlichmann's notes, HAK omitted mention of this discussion in San Clemente in talking to the President; he said he had seen me only at MIT and before that in the White House in 1969. Incidentally, since DR reports that HAK had a critical phone conversation with Nixon--on Monday? 14 June--which changed N's attitudes, what was the need for him to discuss his knowledge of me in the Oval Office? Was he explaining the situation for the benefit for others than the President: Ehr, Haldeman, etc.? Or had he simply not said much about me before?)

Probably what HAK conveyed to N--which is the subject of DR's speculation--was the possibility or probability that I had documents on Nixon's secret threats and plans for escalation, not all of which had yet been carried out and all of which were still secret and should remain so. These did bear on the "peace negotiations" with Hanoi in Paris; my publication of such documents would not reveal anything to Hanoi (except that the threats were not entirely bluffs, which they undoubtedly assumed anyway--in that sense, publication would have served Nixon's policy) but would reveal to the world that the "negotiations" were exercises in coercion, threats, intimidation, attempts to win. I might have been able to reveal what their actual secret demands were.

It occurs to me now: such publication might indeed have had some bearing on the negotiations with China, the prospects for the trip to China. If Nixon's secret threats to Vietnam were revealed to the public, China might have had to denounce them and it might have been somewhat harder for China to welcome Nixon to visit China! Likewise, Russia. What did the North Vietnamese actually think about the visits to Russia and China, anyway? Probably they saw them as a sellout to some extent just by virtue of the welcome to Nixon; and they probably feared that specific secret deals would be made to their disadvantage, with a consequent reduction of Soviet and Chinese aid and possibly pressure from their allies to make a deal with the US (which did occur).

All this would become more embarrassing and difficult for the Chinese and Soviets to agree to in the context of new revelations by me about Nixon's threats and demands.

Moreover, toleration by Nixon of the newspapers' current revelations about the PP, i.e., about previous administrations, would raise questions about what else might be revealed by me and by others, i.e., about Nixon's ability to keep secret his own past and current policies. And China and Russia would worry about Nixon's being discredited by such revelations, because that would make it harder and less creditable for them (especially in their own relations with the Third World!) to be dealing with him, welcoming and celebrating him, and making deals with him! They would be revealed as selling out their Vietnamese ally, even more obviously than they appeared to be doing in the absence of any new revelations by me and in the absence of public understanding (to this day!) of Nixon's true policy.

(IF Stone: the Russians bought US grain at the price of Vietnamese blood. He got the picture).

Hanoi, I would guess, could only gain by such revelations by me. (Why didn't they make them themselves, then? My best guess has been that they were afraid that airing Nixon's threats might lead to enough public support for them, to win the war, that they would actually be more likely to be carried out. If Nixon had made the same calculation, Nixon would have made them public. I think Nixon's fear of testing this was probably sound from his point of view, though not certainly. Anyway, in the context of the publicity about the PP, revelation of new threats would not have played well, and it would probably have become more difficult or impossible to carry them out.

Thus, my new revelations would have "jeopardized and undermined US 'negotiations' with North Vietnam because it would have made it much less possible to carry out his threats, made the threats less credible and effective, perhaps even have led to the repudiation and rescinding of the threats, which were the basis and substance of the 'negotiations.' (It was not North Vietnam which required secrecy for these 'negotiations.')

And my revelations would have threatened the trips to China and the SU, and undermined the 'negotiations' leading toward these, because those countries required secrecy not about these trips or the negotiations leading to them--which were almost complete for China anyway--but they required secrecy about Nixon's 'negotiations,' or threats, with/against North Vietnam if it were to appear acceptable for them to be welcoming visits by Nixon and to be making deals with Nixon.

At least, it was reasonable for HAK and Nixon to fear that the Chinese and Russians would feel this way. We know that they had comparable fears just before the Russian trip, when they planned to reveal part of their threat-strategy by carrying it out in mining Haiphong and bombing North Vietnam, possibly hitting some dikes.

We know from the Haldeman diaries and various memoirs that Hak in particular felt it was almost certain that the Russians would cancel the summit, rather than welcome Nixon as a guest while their ally was being mined and bombed.

He would have had the same fear in June 1971 about the revelation of the threats (along with the more important fear that the threats couldn't be carried out and couldn't be effective on the DRV, or lead to pressure on the DRV by their allies, if they were made public and led to public repudiation).

And he could easily have convinced Nixon of this, in less than a minute. Especially with reference to the people who had left the White House in protest precisely against this policy, some of whom were currently working for Nixon's opponent Senator M---, and who could have given me documents to reveal.

At the same time, he could not really reveal these real concerns to those in the Administration who were ignorant of his real strategy (or who opposed it, like Rogers and Laird and various Cabinet members). This included Ehrlichmann, who did not know the strategy. (Whereas Haldeman did; presumably Butterfield; almost certainly Colson; Haig (at this time in the Army staff?). Probably not Mitchell? Not Magruder; Dean).

It's like the ExCom; secret discussions in the Oval Office are often like a Big Store, even though they were not meant to be revealed (although some of them were, selectively, by the President!) because there were secret policies and operations which would be known to some of the participants but not the others, and those in the know would also know that the others did not know and must not be told.

This is the effect of Secret Policy on "discussions" within the Administration, even at the highest levels. Some of the participants are keeping secrets from some of the others (Haldeman from Ehrlichmann, e.g. on the existence of the secret taping system!), which means not only that they can't tell everything they know, they can't respond to questions honestly, but that on occasion they must actively dissemble, in the presence of the President, in order to deceive the others or to distract them. And in any case, "speculation" that occurs (as in the ExComm) may have little relation to what some of the participants know the answers to the questions to be. The group discussion may converge on conclusions as to the motives of adversaries that some members know to be wrong. (See the speculation in the ExCom on what could possibly have led the Russians to put missiles in Cuba. Mongoose is never mentioned, in the transcripts released (and probably not in the excluded portions, either).

Interpretations of the WH transcripts, as by Rudenstine, ignore the possibility (the certainty) that certain matters cannot

be mentioned in front of some of the participants, no matter how high their position and how intimate, in general, their relation to the President and the other participants.

In this case, it is Nixon's Vietnam policy, and the possible revelations about it that I might make, that could not be discussed (except by Nixon and HAK alone, or with Haldeman: and these we do not yet have, nor do we have discussions with Colson). However, we do have frequent allusions to other information I might leak, some nuclear!, but without spelling out what it might be. Also, see the concern that I had NSC documents. And the specific concern about HAK's former lieutenants.

Why was Nixon so specially concerned about Gelb? and Lynn?!

All this would lead Nixon and HAK toward two conclusions:

1) To reassure China and Russia about Nixon's concern for secrecy and thus the likelihood that his Vietnam threat policy would remain secret (and their own past knowledge of it! After all, what I might have revealed was that they had served as channels for threats to their Vietnamese ally!)

pursue prior restraint on the newspapers (even though this meant giving up the advantages Nixon saw initially in releasing information discrediting the Democrats--until HAK pointed out that this would simultaneously discredit Nixon's own policy, which was essentially the same. The latter point is not entirely true, because Nixon could claim, and many in the public would agree, that what was wrong with the Democrats' strategy was their pussyfooting execution of this policy and their failure to to pursue it a l'outrance, to make threats as strong as he was making. This would be a public debate, which Nixon might well win, but which he could well lose. He had already chosen not to make the gamble; and the gap between what he had disclosed and what he had actually been doing would raise questions.)

(Disclosure of the Diem assassination was another matter; here Nixon not only wanted the PP version out, but he wanted Colson and Hunt to "improve" on the record, in contrast to Administration public statements (see...Rudenshtine?) about how disastrous it would be to undermine previous Administrations by revealing their mistakes and crimes. Actually, Nixon does seem to have had an earlier obsessive belief that the actions of JFK on the Diem assassination had been more dastardly and damaging than had yet been revealed. Likewise with respect to the Bay of Pigs: that there had been an assassination that had undermined prospects for its success. (See Ehrlichmann's novel: killing of a priest who could have rallied public support to the Bay of Pigs invaders. This may have referred to something in the Bay of Pigs--or to a JFK veto or undermining of an effort to kill Castro just before the Bay of Pigs (see H: but why would JFK have done that deliberately? To keep Ike

and Nixon from doing this before the election and thus winning the election, at the price of making it hard or impossible to do it in the JFK administration?)--(thus, "the Bay of Pigs things" may have referred not so much to the embarrassment of revealing that the US had tried to assassinate Castro--;that wouldn't embarrass anybody--but that JFK had sabotaged efforts to do this!)

Or it may have referred to the Diem assassination in Vietnam! Or to both! (The ----- Report").

Second: They had to stop me, shut me up: both with a criminal indictment--which would not be sufficient in itself, perhaps not even helpful (but perhaps inescapable, in light of the first objective and the injunction route: note the timing of my first indictment, just before the Supreme Court oral argument. My prosecution, desired of course by the Justice Department (everyone over there? or not), may have been a regrettable, costly, price paid for maximising the chance of impressing the Supreme Court. It did, however, have the important payoff of detering other possible leakers. It couldn't and wouldn't stop me and my revelations, and on the contrary would give me public attention and a platform, as some pointed out. But I wasn't the only possible leaker, or even the main one. I was at worst a channel for others, with much more authority (about the Nixon Administration) and much more access to documents. They had to be deterred, and shut up. My trial was a strong deterrent.

(What else was done to shut them up? Were the plumbers really directed only at neutralizing and silencing me? What about: Halperin, Gelb, Lake, Lynn, Morris, Watts? Lord? Other HAK aides? Wiretaps stayed on Halperin, Lake, Sonnenfeld!, others. But what besides taps?

So the plumbers were born at the same time as the prosecution and the injunction: all aimed at maintaining the secrecy of past and current and future Nixon/Kissinger threats.

All this could easily be conveyed in a 15-minute conversation between HAK and N, and between N and Haldeman (as, in the 17-1/2 minute gap!) GET THAT PHONE CONVERSATION! And talk to Butterfield about the gap, in terms of what he knows, or can be told, about the Vietnam policy.

It's new for me to realize that all these references to the China/Vietnam/Russia negotiations (even, say, about getting POWS back--i.e., about ending the war) did or could or probably did have some basis in reality, they weren't just blowing smoke about their reasons. But not what the Administration suggested, and all commentators have inferred or accepted.

(Talk to Hersh and Halperin about this: the only ones who have it right on the background. Who would also know and might possibly talk: Sonnenfeld? Lord (who would know, though almost surely

wouldn't talk). Haig? Colson? Butterfield (the best remaining
bet). Talk to Morris. Lake? Lynn?

June 15, 1996

Another new thought today: thinking about statements by Hedrick Smith on the C-Span series, "I've never revealed our source...Daniel Ellsberg can say what he wants." And Sheehan, quoted on the series: on whether DE gave the PP to the Times, "That's a complicated question." And Rosenthal to me a few days ago on the phone: "We don't reveal our sources. And even if the person reveals himself, we still don't reveal the source. I like that principle."

Wait a minute! The Times never reveals its sources? But the Times reveals most of its sources: all the sources of quotations or information who are revealed by name and/or official position!

The Times doesn't reveal its sources who don't want to be identified and who have been promised anonymity! The Times doesn't refuse to identify, or confirm, a source who initially wants or is willing to be identified or to speak on the record (i.e., all its sources except those who make a specific deal beforehand to speak off the record or anonymously).

What then about a source who initially requests and is promised anonymity who subsequently discloses himself or herself?

Does the Times really have a rule, a principle, that covers this? As far as I know, I was the first case of this, and remain the only one!

The notion, "Our principle is, we still don't reveal our source" looks somewhat plausible at first glance, but a moment's thought (after 25 years of feeling uneasy about it! I can't take a lot of credit for brilliance about being able to analyse what was wrong with this, though it made me uneasy for 25 years) reveals that it is absurd, ridiculous.

Can that mean (it has meant, in practice) that the Times refuses to confirm my claim that I was the source? (That's the problem their "silence" has created for me.)

The principle of not revealing a source who has, exceptionally, been promised anonymity, is based on the principle of not breaking an important promise (and thus, giving credibility to future promises, and safeguarding the Times' ability to get future information on the basis of such promises.)

But if the person to whom the promise has been made releases the Times from that promise, and calls on them to confirm their collaboration...?!

(Could I possibly want them to keep silent about their role, and mine, when I have acknowledged my own role in public? It would

be different if someone else, say the Justice Department or Sidney Zion, had charged me with being the source, and had even taken steps to "prove" it with evidence, but I had not yet publicly agreed. Thus, the period after Zion had identified me, but I had not yet acknowledged that he was correct. Or, after I had been indicted, or even convicted, but I had not acknowledged my action).

It would even be different if I had acknowledged my role, but clearly reluctantly, and perhaps in hopes that my acknowledgement would get minimum attention and airing. The Times might not want to appear to be quick or eager to discuss its source as soon as the source made some acknowledgement. That might not encourage other sources to trust the Times' discretion.

But to say: The Times doesn't reveal sources...! As if all its sources were permanently anonymous!

That's as if Anonymous, the author of Primary Colors, were to reveal herself, with evidence, at a press conference: and her publisher were to refuse to confirm this! (Unless it was the publisher who insisted on anonymity!)

Or if Deep Throat made a deathbed confession, knowing that Woodward and Bradlee were going to reveal it the next day anyway: and the Post refused to acknowledge the validity of the claim!

Rosenthal and Smith say, "We don't care what others do or say, we don't...Dan Ellsberg can say what he wants, but..."

(Everyone, including me, has taken this as peculiar, and somehow not wholly convincing--and in my case, as hostile...but without being able to put one's finger on just what's wrong with it, as a principle.

I asked Rosenthal: Has there been another instance of a source identifying themselves? He said he couldn't think of one right off; but in some cases others identified them (a very different thing)...

Other analogies they're probably drawing on (for plausibility, and to rationalise it to themselves):

--Some other paper "violates" the rules on a backgrounder, and identifies the speaker, to whom the Times has given anonymity. This happens quite a bit.

But suppose the speaker then acknowledges that he was, after all, the source at that background interview (usually with many participants). This sometimes happens. Does the Times then refuse to identify him, in later discussions of the quote or of the incident, even when other papers are doing so? Do this say, "other

papers have identified the speaker; the Times, having promised not to do so, does not" or "Secretary X, who has identified herself as the source of the quote," or even, as in my case, "Secretary X, who says she is the source," or "who describes herself as the source?"

(They could have said with me, as they surely do in some of the above cases, "Daniel Ellsberg, who has acknowledged publicly that he was the source," not "who describes himself, who says he is, who identifies himself" (all without the Times indicating that these claims are valid!)

--Rape victims, whose names have been initially withheld by the Times but later identified by someone else (and who may or may not have subsequently identified themselves. If they have, repeatedly and publicly, however reluctantly, would the Times continue to withhold their names?)

Why, after all, did I reveal myself?

1) To exonerate, as specifically and credibly as I could, other possible suspects (the newly-available record shows how much Gelb was suspected! Even more, it seems, than Halperin.)

2) To speak on the issues of Vietnam and secrecy with the authority, not only of having worked on the Papers and on policy and in Vietnam, but with the attention and interest and authority of having faced the issue of revealing the Papers or not and having chosen both to release them and to reveal myself;

(The Times probably thought this was uppermost in my release and in my revealing myself, like a Unabomber "doing anything"--in his case, carrying out terrorism and threatening more--to get attention for his views, and to get egotistical satisfaction from the attention (which the Unabomber eschewed, satisfying himself with the public discussion of his views and his possible identity while enjoying or suffering anonymity, like Deep Throat and Anonymous: as the Times saw it, that wasn't enough for me!

But given the price of this for me (beyond even that for Deep Throat and Anonymous, comparable to that for the Unabomber) I would have foregone this attention and authority, despite its rewards. After all, the content of the PP spoke for itself and carried the main message (as in all three of these other cases). The additional message I could convey, the authority my role would give me and the gratification of the publicity would not be worth the additional chance of going to prison for life, or ten years. (A month? Yes. A year or two or even three? Probably: given the third incentive as well. Ten-thirty-100? No. It was the case neither that a) I didn't really believe I could go to jail that long, or at all (the assumption of most of the press in LA,

especially the Times' Marty Arnold; or B) my egotism was so great that I needed the extra publicity, or that I lusted after the fame, enough to be willing to go to jail indefinitely, or for 5-10 years, for identifying myself.

Now, if it had significantly helped the cause for me to be identified, say by the Senate or McCloskey or Mathias, or to risk being identified: yes, for that I would go indefinitely, I would give my life. I was that kind of a nut, an obsessive, a fanatic, a martyr. But in that case, it would not be necessary for me to have a platform or to "speak with authority." I assumed that their identification of me, or mine of myself, might lead to immediate imprisonment without effective bail, and that I would be effectively incommunicado. My enjoyment of fame would be from behind bars, and sans interviews.

3) To set an example of non-violent civil disobedience, a model that might inspire others to do likewise: to make clear my willingness above, to pay any price in order to further the cause non-violently and truthfully (i.e., to be able to state that I had made the choice to release the Papers to the Senate and the newspapers in full awareness and expectation that the price would be a long jail sentence: not to support the inference that, in fighting my prosecution even to the point of being unwilling to admit my role that I might not have anticipated prosecution at all, and now would do anything to avoid prison.

I wouldn't have identified myself--thus inviting prosecution--for this reason, either, so long as the option appeared to exist of getting the papers out without being prosecuted. It was worthwhile, worth even a small marginal increase in the chance of conviction, but not worth the difference between not being prosecuted and a greatly increased chance of being prosecuted. (Ironically, my acknowledgement may have greatly increased my chance of conviction, once prosecuted, and may even have increased the chance of prosecution significantly. I did, in effect, reveal myself to Cronkhite before I had actually been indicted--though Zion had named me, McCloskey and McGovern (beward those Mc's! Like McNamara! Then there was Mathias, another M, who secretly named me) had revealed that I had offered the Papers to them: still, they weren't newspapers). Knowing that I would almost surely reveal myself, after Cronkhite (I had refused to do so to Newsweek before I went underground) must have made it easier to contemplate prosecuting me successfully.

Because it turns out, it would have been hard to prove that I either copied the Papers or distributed them if I had refused to talk (along with Tony, Robert and Mary, etc.) But I would have had to forego the opportunity to say publicly that Warnke, Clifford, Gelb, Halperin and (Senator from Maine! I'm having trouble reembering his name, candidate for Pres, M...!) (and Lake, Lynn, etc.) had not been part of a conspiracy.

(I need to ask Halperin and Gelb: If they really were worried that I might release the Papers, and that is why they initially refused to give me access till Harry insisted! why in the world did they give permission? It does begin to look like a conspiracy: though if they were really worried, simply, why did they do it? They didn't have to give any explanation to Harry!

On the other hand, they would have had to give an explanation to me! I would have been furious, and incredulous; I would have exploded; and they would have had to explain (though they might have laid it on Warnke; but I would have called him, too.) What would they have said? That they feared I might reveal it? What would I have said, then? (I knew what I had done in 1968. Did they? Clifford did; does that mean Warnke did? And they? Would they have told me? Would this have put the idea in my head? It would have appeared rather damning for Halperin to have given this reason in court during my trial, damning to Halperin, appearing to confirm Nisson's theory of the case!

Sunday, June 16, 1996

Abe Rosenthal: Issue was not, How could we publish this information, but how could we not? [from point of view of journalists: how about, me, from perspective of official/former official/consultant?]

Meaning of patriotism....

James Goodale: Paper had wanted to publish a series of installments, a continuous sequence of information. The fact that the gov stopped it ruined the sequence; and the nation's attention was shifted from the Papers, the content, to the court case, which was too bad.

AMR: yes, the proper attention that moved to the government's attempt to stop pblication shifted attention from the content of the papers, which was a pity.

Each of the Presidents was making decisions, Ike not knowing how his decisions would affect JFK [each underrated how much his own decisions would affect and constrain his own later decisions, his inability to stop and change course...]

The war had ended, no, it was still going on,[sic] but the military exercises in the Paper had ended...we were reading knowing how the earlier decisions had affected the later ones...

AMR: Made decision we would not print anything that would endanger lives of American troops, we would not print names of CIA agents [note],...

we looked for any intelligence marks that would reveal communications intelligence...

nothing on ongoing military operations

AMR: I felt that we had to print the documentation, though it was a scary thing to do, we had never seen anything like this...just looking at the page proofs, it made us queasy to look at these things, memos of the President...

Goodale: my advice had been, I don't see how you can not print the history, but the documents might present a problem...

what turned me around was an account by McGeorge Bundy on the Tonkin Gulf; I was so astounded by this document, by the chilliness of the tone, that I felt we had to print it...

[I SHOULD DEFINE WHAT IT WAS, AND WASN'T, IN THE PP THAT I FELT HAD TO BE PUBLISHED, WHAT IMPRESSED ME...]

AMR: let the historians argue with the documents, not with the NYT...

Clip from McN about his dinner Monday night with Scotty Reston, he and his wife were old friends...Reston asks McN "What should we do? What's your advice

I said to him, Scotty, go ahead and publish, with one exception: if the SC says to stop, for God's sake

AMR: We really weren't waiting for McN's decision as to whether to print them, we already had them set up in print, and we had already decided that we would obey a court order [not just the SC...]

Goodale: Reston was the hardest to convince that we should obey a court order...

AMR> There were a lot of people that Monday night who felt we must obey Mitchell's request--which as far as I was concerned was just a telegram from a lawyer...[!]

AMR: it was my decision to call it, in the headline, Vietnam Archive, as dull a description as was possible...when we resumed publication we called it what the whole world was calling it, the PP, what it should have been called.

Caller: Why did it take so long for the national news to get this information...There was a movie, The Year of the Pig, which had much of this information...

AMR: there's a big difference between an underground press, or a movie, printing this without the documentation, and our printing the documentation...we didn't publish it earlier because we didn't have it.

[well, why not? and why not

A new Times book: The Papers Papers...

[Note that NYT never showed any curiosity about the process of the other papers getting the papers...i.e., no attempt to interview me...e.g. on my perspective about my relation with Sheehan,

Times spent \$320,000: Goodale: even in 1971 dollars, one hell of a bargain. Bickel submitted bill only \$40,000: embarrassing.

AMR: I had to warn Punch: we didn't know how our readers might react to our publishing of the papers; we'd go to court, we might be in jail...but as an editor, we had to publish the papers...

Chief Warrant Officer: was in Nam during Tet...

Think we should hold our officials

Susan Swain: how do you think the publication of the PP contributed to the Communist victory? Caller: it demoralized the public...

AMR: that did not come about from the publication of the PP or the reporting on the war, it came from the public's feeling that the war was lost and it was going on too long...

and it was printed by a person (himself) who was not against the war, I was probably wrong about that...

Caller: I had read everything on VN before I went, and I read the PP and there was absolutely nothing new in them

[DEFINE WHAT I SAW A 'NEW']

AMR: This told us how the decisions were made, when the officials were telling the truth and when they were not, when the military told the President that we were losing the war [?] and this was not conveyed the American people...

amr: UNFORTunately many of the people who should have read the PP did not for years later, because the court case absorbed all the attention

[still!]

AMR: Lord Day and Lord was the family lawyers of NYT, Brownell was now the head of it...we had a bitter fight that Monday night

Goodale: The first thing I said to Brownell on the phone was, "Herb, you looked great at the wedding." But I've learned now that Mitchell had been on the phone to him [to NYT's lawyer!] just before, and his reason he gave for dropping the case was not his real reason...

Herb should not have been on the case, and we should not have permitted him to...

[Note the incestuous relationships: McNamara/Reston, ...Brownell/Mitchell (AMR: Lord Day and Lord had become an instrument of the Republican Party)]

AMR: we've learned since that the military situation was even less favorable than the authors of the PP thought, at the time they were writing...

[NOTE LACK OF CURIOSITY IN NYT ABOUT THE PP OF THE NIXON ERA, OR THE NIXON STRATEGY...I FAILED TO CONVINCE THEM, TO INTEREST THEM IN IT (SEE EVEN MY EXCHANGE WITH HERSH!)]...OR EVER SINCE. THEY FAILED TO APPLY LESSONS OF PP TO INTERPRETATION OF NIXON POLICY.]

Senator Mike Gravel (unrecognizable, whitehaired with white moustache). I was in the middle of a filibuster against the draft, which was successful several months later...

I got a call from an unidentified person--who I later learned was Daniel Ellsberg--who asked if I wanted the PP to use in my filibuster. He was the person everyone was looking for. Later he called to ask if we had gotten them; we hadn't. We talked about how to transfer a copy.

The idea was to get them into the Congressional Record (and thus make moot the issue of releasing them in the papers, before the courts; is it right that I didn't contact him before the NYT was enjoined? And that I did while I was underground? Wouldn't I have told him my name? How did Ben get an extra copy, to transfer? Did I set that up, or did -----? Was BB just helping as a citizen, then? That could have been seen as a violation of the court injunction against the Wash Post: certainly, if he had given them to another newspaper; but I suppose not, giving them to a Congressman! Still...]

I eventually met with Ben Bagdikian, I've kept secret his involvement, we worked out out to transfer them...I instructed him to park his car in front of the Mayflower Hotel at a certain time, I would drive up, we would transfer the papers from the trunk of

his car to the trunk of mine, right under the marquee of the hotel...that's how we did it...

I looked them over to see if there were any military secrets in them

(My background had been in Counterintelligence (!) I knew how to do these things...Ben wanted us to meet in some dark corner in rural Washington...I said, No, just the opposite...)

G: We excised some names of people who might be in the CIA, or the State Department (?)

G: private speech of an American citizen must be subject to some controls, shouting Fire in a crowded theater...but the political opinions of Americans on political decisions must be absolute, must not be interfered with by government at all...

G: We lost the court case (!)...but it made no sense for Nixon Admin to pursue an indictment, which they could have done [there was a grand jury in Boston looking at me...] when they were up to their eyeballs in Watergate...so issue became moot by passage of time.

Susan : crux of government position on papers?

Mardian: That the government had classified these documents, Top Secret/Sensitive, and that possession of unauthorized copies of these documents was a violation of law.

Assistant Attorney General 1970-72.

Does it look different to you after 25 years?

The court case was a rush to judgment...If the government had had more time to assemble its case, the outcome might have been different...that was the view of the 3 dissenting judges...the judges and gov lawyers didn't have time to meet the standards for prior restraint....

gov maintained: irreparable harm.

Three judges, Black, Douglas and Brennan, felt that the First Amendment was an absolute prohibition against the government getting prior restraint in any circumstances...the judgment was 6 to 3 against that opinion.

Near vs. Minnesota: SC had said that in appropriate circumstances (not defined) gov could get prior restraint. Also in ...

[What would have been my platform, my fame, my authority if there had been no injunction; or no criminal prosecutyion of me (Nixon/Ehrlichman initial position: RM confirms this was N's initial reaction, "Not our problem." However, State Department, DOD, and NSA could not accept that view; I don't know if it was HAK's opinion alone that persuaded N to change his mind...but except for [some] people in the White House (!) all the governemtn agencies involved felt there must be

RM: DE clearly violated a statute...Not one of the justices involved would agree with Mr. Ellsberg's statement (about OSA and treason...

Mr. Ellsberg should have been convicted of ...sedition...and the reason he wasn't convicted was because of what has come to be called the Kissinger tapes [AND MARDIAN'S ROLE IN MOVING THE RECORDS OF THE TAPES FROM THE FBI TO T5HE WHITE HOUSE!]

[Get comment on "sedition"--do we have such a law, in light of First Amendment?! I was commenting on whether I was guilty of "treason," not so much whether I had violated any law at all. Well, no, I did imply that "it was not a crime" for me to have done what I did; that was true

But for Kissinger tapes, RM believes he would have successfully prosecuted DE: "No question about it, no question about it."

[Well, it's in between. On the face of the laws, I could be said to have violated them--depending on defintion of nat sec. But no one had ever have been prosecuted for such apparent violation

Caller: Mrf. Ellsberg and his cohorts are traitors, and are still advocating subversion of the government...My husband was in communications intelligence, and he would have guarded those secrets with his life...

We were astounded that these arrogant young men had.. (put ou government secrets) and they are responsible for the loss of American lives, for the disillusionment of the American people...

RM: It's true that 90% of the information in the PP, by itself, could not be classified Top Secret, but "the law [sic] is very clear, that if one page in a document is classifiable TS, the whole document is...

[THERE IS NO SUCH "LAW"; THERE IS AN AGENCY/EXECUTIVE BRANCH REGULATION; MY LOYALTY WAS DUE TO CONSTITUTION AND LAWS, NOT TO

THESE REGULATIONS...]

CALLER: Has there ever been any determination of how many lives were lost as a result of the publication of the PP...and I am of the opinion that the Oklahoma City bombing was a direct result of that period in our history...(disillusionment of the American people)

[Such a question reflects correct view that information should be kept secret from public only if its publication would cost American lives...plus the incorrect assumption that this is the criterion that government officials act on, so they assume that loss of American life must actually have resulted from the actual publication...

In reality, all the American lives that were lost were directly traceable to the improper, abusive concealment of information and government lies: gov was withholding information that would save American lives by, let us say, leading to public support for withdrawal for the war...

RM: the PP weakened the government's position in carrying out its policies on the war...{yes!]

[NYT: What is their opinion on: Did I, as a government official former, consultant, do what I should have done?

To Rosenthal: should I assume that he did not respect me or my action at the time...that he felt hostile, and that this showed...

MR> as a result of what (i) did, the war was extended, because we lost the support of three nations that were assisting us in trying to end the war [[what nations? what role? what negotiations-- what prospects of ending war? what evidence of actual effects?]

Cspan:

I was tried in the WG matter, along with Bob Haldeman, E, M...and I was convicted by the jury in Washington...however the Circuit Court of Appeals unanimously reversed my conviction and in effect said I shouldn't have been tried with them.

Caller: Navy radioman, in VN for 32 months (probably Comint): if I had done what they did (DE and Miss Hanoi) I would be sitting in jail...I still don't understand why the government didn't try to put those people in jail...I don't know why the civilians in the

Pentagon are subject to different standards from the military

(Many in audience miss difference between SI/comint, and between UCMJ and Const.)

Caller: To hear

I thank God for DE and for the NYT for having th courage to tell us the truth...if they had been published much earlier, the public would have turned against the war much sooner and I would not have had to live with 25 years of my husband's crazy behavior as an Agent Orange veteran and a PTSS veteran

Caller: at the time, I was foursquare for the war and was screaming for the government's head, but now...do you really justify the breakin to DE's psychiatrist office...

RM: that was clearly a reprehensible act...I would never have supported it...I was told at the time that the reason they set up the plumbers to stop leaks from the White House (sic) was because I wasn't doing my job at Internal Security.

RM: the lifeblood of diplomacy is secrecy...Publication of PP prolonged the war, didn't shorten it...

Caller: without people like DE--I don't necessarily agree with what he did--how do we hold accountable government officials who are committing crimes and withholding information (lying...)

RM: PP didn't reveal any crimes...unless you take position that US intervention in Vietnam was a crime...[Well...]